Computer Associates International, Inc. and Cushman & Wakefield of Long Island, Inc. *and* Local 30, International Union of Operating Engineers, AFL–CIO. Case 29–CA–17315

October 31, 2000

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On June 4, 1998, Administrative Law Judge Howard Edelman issued the attached supplemental decision. Respondent Computer Associates International, Inc. filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the judge's recommended Order, as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Computer Associates International, Inc., Islandia, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(a) and (b):

"(a) Offer to Cushman and Wakefield of Long Island, Inc. in writing, to reinstate the subcontract that was in existence on March 1993, and request as a crew to be reassigned to the Islandia facility those nine employees who were effectively discharged as a result of the cancellation of that contract, displacing, if necessary, other employees who are carrying out the work of the nine discharged employees; OR, in the alternative, if Cushman and Wakefield of Long Island, Inc. declines or is unable to reenter into a subcontract with the Respondent or to assign the requested nine employees to the Islandia facility, offer equivalent employment directly to the nine employees who were effectively discharged as a result of its cancellation of this March 31, 1993 contract with Cushman and Wakefield of Long Island, Inc.

"(b) Make whole the nine employees of Cushman and Wakefield of Long Island, Inc., who were working at the Islandia facility in March 1993, for any loss of earnings or other benefits they may have suffered as a result of the discriminatory termination of the Cushman and Wakefield subcontract, beginning from March 31, 1993, until: (1) Computer Associates makes an unconditional offer in writing to Cushman and Wakefield to resume the subcontract and requests that Cushman and Wakefield offer employment to the employees described above, or (2) such time as it has been clearly established in compliance proceedings that Computer Associates would have lawfully and nondiscriminatorily ended the Cushman and Wakefield subcontracting arrangement and that the employees would have been laid off."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge our employees, or terminate our subcontract with Cushman and Wakefield of Long Island, Inc., or any other employer with whom we have a subcontract because of our employees', the employees employed by Cushman and Wakefield, or any other employer with whom we have a subcontract, membership in or activities on behalf of the Union or any other labor organization.

WE WILL offer to Cushman and Wakefield of Long Island, Inc., in writing, a request to reinstate the subcontract in existence in March 1993 and request as a crew to be reassigned to the Islandia facility those nine employees who were effectively discharged as a result of the cancellation of the above subcontract on March 31, 1993. Should Cushman and Wakefield decline to enter into a subcontract, WE WILL offer employment directly to the nine employees who were effectively discharged as a

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's determination that the Respondent is a joint employer of the building engineers supplied by Cushman and Wakefield of Long Island, Inc. to work at its Islandia, New York facility, we place particular reliance upon the Respondent's substantial role in the selection of applicants for hire, as well as the ongoing, close and substantial supervision of those employees by the Respondent's managers.

Member Hurtgen notes that the underlying unfair labor practice allegations involved in this proceeding are res judicata. See *Computer Associates International*, 324 NLRB 285 (1997).

[3] We have modified pars. 2(a) and (b) of the judge's recommended Order to make clear that responsibility for remedying the unfair labor practices rests with the Respondent, Computer Associates International, Inc., and that the right of the displaced employees to a remedy is not dependent on any particular action of Cushman & Wakefield of Long Island, Inc. We have conformed the notice accordingly.

result of our discriminatory termination of the subcontract with Cushman and Wakefield.

WE WILL make whole the nine employees employed by Cushman and Wakefield of Long Island, Inc., assigned to the Islandia facility as of March 31, 1993, for any loss of earnings and other benefits they may have suffered, with interest, as a result of the discriminatory termination of the Cushman and Wakefield subcontract in the manner set forth in the Order.

COMPUTER ASSOCIATES INTERNATIONAL, INC.

Jonathan Leiner, Esq., for the General Counsel.
David Bennett Ross, Esq. and *Lisa E. Barse, Esq. (Seyfarth, Shaw, Fairweather & Geraldson),* for Respondent/Employer Computer Associates International.
Steven Harz, Esq. (Robinson, St. John & Wayne), for Respondent/Employer Cushman & Wakefield.
Ralph Somma, Esq. and *Ira Klein, Esq*., for the Charging Party.

SUPPLEMENTAL DECISION

HOWARD EDELMAN, Administrative Law Judge. On March 6, 1996, I issued a decision in this case. This decision, inter alia, concluded, under *Esmark, Inc*., 315 NLRB 763 (1994), that Respondent Computer engaged in certain independent 8(a)(1) violations and discriminatorily discharged nine employees in violation of Section 8(a)(1) and (3) of the Act. It was concluded in the administrative law judge's decision that the contract between Respondent Computer and Respondent Cushman was terminated by Respondent Computer, resulting in the discharge of nine employees because of the Union's attempt to organize Respondent Computer's employees. Although the complaint in this case alleged that Respondent Computer and Respondent Cushman were joint-employers, such status was not discussed in this decision in view of the theory set forth in *Esmark*, supra.

On August 19, 1997, the Board issued its decision and concluded that the *Esmark* theory was not applicable to this case and remanded the case

> for the purpose of determining the joint-employer status of Respondent Computer Associates International, Inc. relative to the operating engineers who worked at its Islandia, New York facility pursuant to its contract with Respondent Cushman & Wakefield of Long Island, Inc., and attendant liability under Section 8(a)(1) and (3) of the Act.

The Board, in its decision, also stated:

> Although we are reversing the Judge's finding that Respondent Computer violated Section 8(a)(3) as alleged, that does not resolve this case. If, as the General Counsel contends, Respondent Computer was a joint-employer within Cushman of the Cushman-furnished employees, then liability under Section 8(a)(3) may be established.

The Board further stated in footnote 4 that:

> No exceptions were filed to the Judge's dismissal of allegations of violation of Sec. 8(a)(5) against Respondent Computer nor to his dismissal of all allegations against Respondent Cushman & Wakefield of Long Island. In adopting the dismissal of 8(a)(3) allegations against Respondent Cushman & Wakefield, we note particularly the Judge's unchallenged findings, set forth in the fifth paragraph of his "Analysis and Conclusions," that the "evidence establishes that Computer effected the termination of its subcontract with Cushman entirely on its own"; that "Cushman was not involved in any way concerning the 8(a)(1) statements alleged or the decision to terminate the management agreement which resulted in the termination of the Cushman engineers," and that "Cushman was an innocent party." In these circumstances, we find that Respondent Cushman & Wakefield is not liable for actions in violation of Sec. 8(a)(3) which may ultimately be found to have been committed by Respondent Computer in the event that Respondent Computer is found to be a joint-employer of the operating engineers provided by Respondent Cushman & Wakefield. (See discussion, infra.) *Capitol EMI Music*, 311 NLRB 997 (1993).

Analysis and conclusions

In my initial decision, I set forth in detail the reasons supporting my conclusion that Respondent Computer's supervisor, Ed Benz, was not a credible witness, and that the Cushman engineers who were called as witnesses by General Counsel were credible witnesses. Such credibility findings were affirmed by the Board.

Based on the entire record in this case, the credibility findings set forth above and further consideration of the record as it pertains to the joint-employer issue. I conclude that the Cushman employees who testified were credible witnesses. Their testimony was forthright and detailed. Their cross-examination was consistent with their direct testimony. Their testimony was mutually corroborative. Moreover, I was extremely impressed with their demeanor.

In direct contrast, I find, as in my initial decision, but additionally considering Benz' entire testimony, especially as it relates to the joint-employer issue, that he was not forthright in connection with both his direct and cross-examination, that he at times was extremely evasive, especially during cross-examination. Moreover, during his entire testimony he appeared very nervous.

As to the joint-employer issue, the credible testimony establishes that Respondent Computer joined with Respondent Cushman in determining essential terms and conditions of the engineering employees at the Islandia facility. Computer hired the engineers, exercised day-to-day supervision over them, authorized and rejected overtime for them, and conducted an informal grievance meeting concerning one of them. Further, Computer and Cushman held themselves out to third parties as joint-employers and their management agreement provided joint authority over these employees.

Two companies constitute joint-employers where they share or codetermine those matters governing essential terms and conditions of employment over the same employees. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1124 (3d Cir.

1982). The Board construes joint-employer status based on the facts of each case. *Boire v. Greyhound Corp*., 376 U.S. 473, 481 (1964). Joint-employer status requires a showing, inter alia, that the employer in question meaningfully affects such matters as hiring, supervision, direction, and discipline. *TLI, Inc*., 271 NLRB 798 (1984).

Detailed and extensive testimony establishes that Computer management directly hired the Islandia engineers. Computer Manager Ed Benz interviewed applicant Tom McCormick in his office. Benz asked whether McCormick could start Monday, and McCormick said yes. Benz then announced, "Okay, start Monday," and McCormick did so.

Benz interviewed applicant John McKenna in his office. Benz asked for and received information from the applicant regarding his work experience. Benz commented to Chris Post, a unit engineer, "I'm sure he's [McKenna's] more than qualified," and Post agreed. Benz then directed, "Hire him."

McKenna reported as directed to Cushman's office at EAB Plaza. Cushman's manager, John Bzezinski, remarked, "I understand you've been hired by Computer Associates," and McKenna said yes. McKenna filled out some papers and went to work at Islandia shortly afterward.

Benz interviewed applicant Tom Stackpole in a construction office at Islandia. Stackpole filled out a job application while Benz left to enter an adjoining, empty office. Chris Post commented that he would check with Benz to see whether Stackpole could start work that day. Post went to the adjoining office and returned a minute later with the news that Stackpole could start work that day.

Benz also effectively recommended the hiring of the first Islandia engineer, Chris Post, himself. Benz and Cushman's John Bzezinski jointly interviewed Post. Bzezinski thereafter asked Benz for his opinion of this applicant. Benz commented that he could work with Post. Bzezinski telephoned Post to tell him that he was hired and that "they" had liked him during the interview.

Cushman sought written confirmation from Computer management that these applicants had been hired. Benz and Computer Vice President Donald Hoffman signed their approval of the hiring of the various engineers. Nothing on the face of these documents limits these approvals to payroll purposes.

Cushman's John Bzezinski also submitted a "recommendation" to Computer to promote Post to chief engineer, and to raise his salary. The recommendation noted Post's previous hiring "by Computer Associates." Computer's Donald Hoffman executed a single approval for both requests.

Board law emphasizes the hiring function as a crucial component of joint-employer status. In *D & S Leasing*, 299 NLRB 658, 671 (1990), the judge and Board emphasized that Employer Cartage actually hired many of the employees. In *Marcus Management*, 292 NLRB 251, 260 (1989), the judge and Board relied on Employer Marcus' mere hiring of employees "in conjunction with" Employer Roseville. In the present matter, Computer management hired several engineers at their interviews and confirmed their hiring and promotion thereafter in writing. As in the cited cases, I conclude Computer's hiring of these engineers constitutes a major factor in finding joint-employer status.

Credible testimony establishes that Computer management exercised day-to-day supervision of the Islandia engineers via the assignment of work. Benz and Computer Assistant Manager Tom Piankos made daily tours of the facility and wrote up deficiencies on work orders. The Islandia engineers performed the assignments on these work orders every day.

Benz' assignment of work to the Islandia engineers often exceeded these routine functions. Benz assigned Post to trace out atrium lights. Post's report to Benz vividly depicted the complexity of this assignment based on the configuration of the relay system and disconnect breaker.

Benz directed John McKenna, inter alia, to reset the fans through the computer. He shifted McKenna to new assignments after he completed the old ones. He consulted with Post and Stackpole to schedule and define the performance of special jobs like sheetrock and electrical work.

Board law emphasizes even routine supervision as a vital component of joint-employer status. In *Quantum Resources Corp*., 305 NLRB 759, 760 (1991), the Board relied on the factor that FP & L superintendents "closely *and routinely*" supervised unit employees (emphasis added). The Board found that FP & L, through the constant presence of the site superintendents and a high degree of detailed awareness and control of unit employees' daily activities," exercised substantial supervisory authority. *Quantum Resources Corp*., 305 NLRB 759, 760. In *G. Heileman Brewing Co*., 290 NLRB 991, 999 (1988), the judge and Board noted that Heileman supervisory personnel "supervised and directed the work of the employees *to the extent that it determined that such supervision and direction were necessary*" (emphasis added). In the present matter, Computer management performed this routine supervision *and also* assigned and oversaw the performance of other work which required greater discretion. As in the cited cases, I conclude this factor of supervision tends to establish that Computer is a joint-employer with Cushman.

Benz performed this supervision in the absence of any representative from Cushman. John McKenna worked the 3 to 11 p.m. shift from his June 1992 hiring until January 1993. Jim Mills worked the 11 p.m. to 7 a.m. shift for most of his employment at Islandia. He switched to the 3 to 11 p.m. shift his last several weeks there. Neither McKenna nor Mills ever saw any representative from Cushman's EAB Plaza office at Islandia.

Both McKenna and Mills performed the preponderance of their work even in the absence of Cushman Chief Engineer Chris Post. Post worked a day shift from 7 a.m. to 3 p.m. McKenna noted that Post worked "numerous times" until 6 p.m. or McKenna himself, however, worked until 11 p.m., without Post, but "sometimes" with Computer's Benz or Tom Piankos. He recalled that Benz stayed late "many more times" than Post did.

Jim Mills never worked with Post on the 3 to 11 p.m. shift. He knew only that Post "used to work a little overtime" after Post's 3 p.m. scheduled departure. He obviously shared no overlap at all with Post while working the 11 p.m. to 7 a.m. shift.

The Board stresses the absence of the ostensible employer from the workplace in finding joint-employer status regarding

the relevant employees. In *D & S Leasing*, supra, 299 NLRB 658, 671, the judge and Board emphasized that Employer Central performed daily supervision of the unit employees, whereas ostensible Employer D & S had no contact with them other than sending them weekly paychecks. In *C. R. Adams Trucking, Inc*., 262 NLRB 563, 566 (1982), the judge and Board noted that Employer Michael Cates had little time to participate in the unit employees' day-to-day operations because of his full-time employment elsewhere. In the instant case, Benz exercised supervision over the Cushman engineers for long periods in the absence of Cushman statutory supervisors and even in the absence of Cushman Chief Engineer Post. As in the cited cases, I conclude that Benz' supervision with Cushman's absence is a further factor in establishing joint-employer status.

Extensive, corroborated testimony establishes that Computer's Benz authorized and rejected overtime assignments for the engineering employees. Post and Tom Stackpole testified consistently that, as approaching work assignments necessitated overtime, they drafted a schedule and presented it to Benz. Benz verbally approved or initialed the schedule and the employees posted it on the bulletin board. The employees obtained Benz' approval in every case before posting the schedule. All employees obtained at least verbal approval from Benz before working overtime, except in emergency situations. Benz apparently approved overtime in those situations after the fact.

Benz rejected requests for overtime on about seven occasions in December 1992 or January–February 1993. Benz directed performance of the work on these occasions through use of apprentices, rather than engineers' overtime. He made this decision to minimize the overtime which the engineers were accumulating during this period.

McKenna recalled similarly that Benz verbally approved Post's suggestions that McKenna work overtime. McKenna also recalled that Benz rejected, "quite a few times," his own requests for an employee to work overtime, citing budgetary considerations.

Board law consider the authorization of overtime to find joint-employer status. In *Quantum Resources Corp*., supra, 305 NLRB at 760–761, the Board relied on FP & L's authorization of overtime in finding that company a joint-employer. See generally *D & S Leasing*, supra, 299 NLRB at 671 (Joint Employer Central exercised control over number of hours unit employees worked); *Pacific Mutual Door Co.*, 278 NLRB 854, 859 (1986) (Joint Employer Pacific exercised control over hours unit employees worked). In the instant cases, Respondent Computer's Ed Benz consistently authorized overtime for the engineering employees and exercised discretion to reject their overtime requests on numerous occasions. As in the cited cases, I conclude that Computer Associates' authorization of overtime is a strong factor to establish joint-employer status.

Detailed, corroborated testimony establishes that Respondent Computer's Benz conducted an informal grievance meeting regarding engineering employee McKenna. Benz told Post in about September 1992 that he disapproved McKenna's bringing an apprentice with him for jobs in the building. Post relayed this concern to McKenna.

Benz also complained to Tom Stackpole in September 1992 about McKenna's work habits. Benz told Stackpole, "I thought if we had a problem with someone we could just get rid of him." Stackpole said no. Stackpole notified McKenna of Benz' complaint. McKenna requested a meeting with Ed Benz.

Benz, Stackpole, and McKenna met in Benz' office later that day or the following day. McKenna commented that he understood Benz had a problem with his work productivity. Benz explained that he had received complaints from people in the building that certain work was being performed unnecessarily by two or more employees. McKenna replied that he was doing his job. Benz explained that he wanted to start fresh and be friends. McKenna questioned the relationship between these sentiments and his productivity. He left the meeting in the hands of Tom Stackpole.

I conclude this conference was an informal grievance meeting. Benz conducted this meeting in the presence of the Union Steward Stackpole. He explained to McKenna his concerns regarding McKenna's productivity. The Board has held such informal grievance resolution is a factor in finding joint-employer status. In *G. Heileman Brewing Co.,* supra, 290 NLRB at 1000, the judge and Board relied on Employer Heileman's informal discussion and resolution of grievances with the Union. In *Marcus Management*, supra, 292 NLRB at 257–258, 260, the judge and Board noted, inter alia, that Employer Marcus directed employee Forbes to specific problems regarding the performance of his work. As in the above cases, I conclude that Benz' informal grievance resolution is a factor in establishing joint-employer status.

The credible testimony establishes that Computer held itself out to third parties as the employer of the engineering employees. Benz supplied Long Island Hardware with a list of "Computer Associates personnel" authorized to purchase hardware. The list includes Cushman engineering employees Post and Andy Meccia.

Outside contractors and suppliers for the Cushman engineers repeatedly directed their work to Computer management. Amron Air Systems delivered "to Computer Associates" on April 7, 1992, two hydraulic grease guns "attention Ed Bentz [sic]." The Cushman engineers used these grease guns to perform preventive maintenance.

Amron delivered "to Computer Associates" on May 21, 1992, hand hole gaskets and manhole gaskets "attention Ed Bentz [sic]." The Cushman engineers replaced these gaskets as required.

Lawson Products delivered to "Computer Associates" on March 19, 1992, plumbing fittings and other items "attn Ed Benz." The Cushman engineers used these plumbing fittings to repair systems at the Islandia facility.

Par-Kut International delivered to "Computer Associates" on December 11, 1992, a heater element for an air conditioner "attn: Tom Pienkos [sic]." Piankos is an assistant building manager and statutory supervisor for Computer. The Cushman engineers installed this element in the guards' booth at the facility as part of their repair work.

The Board has held that this "holding out" characteristic in finding joint-employer status. In *Whitewood Maintenance Co*., 292 NLRB 1159, 1161 (1989), the Board noted that Employer Choo held himself out as the vice president of Employer World, inter alia, to outside airlines which contracted with World. See

also *C.R. Adams Trucking, Inc*., 262 NLRB 563, 566 (noting that Employers Cates and Adams held themselves out as single or joint-employers of the truckdrivers). In the instant case, Computer management held out two engineering employees as "Computer Associates personnel" to an outside Company. Computer management consistently permitted outside contractors to direct supplies and equipment for the engineering employees' work to "Computer Associates" and named Computer supervisors. Accordingly, I conclude this factor tends to establish that Respondent Computer is a joint-employer of the Cushman engineering employees.

The management agreement between Computer and Cushman further substantiates the joint-employer relationship of these Companies. The agreement identifies Computer as "Owner" and Cushman as "Agent." The agreement notes that Agent Cushman, not Owner Computer, employees "the employees necessary for the operation and maintenance of the Building"—that is, the engineering employees. The agreement specifies at point 4, however, that "Agent (Cushman) shall in conjunction with Owner (Computer) . . . (2) Interview, hire and train key personnel in coordination with Owner's facilities manager"—that is, Computer's Benz.

The Board stresses such contractual arrangements in finding joint-employer status. In *Moderate Income Management Co*., 256 NLRB 1193 fn. 1 (1981), the management agreement noted that Employer Marineview employed the relevant personnel. The agreement specified, however, that Employer Moderate "shall investigate, hire, pay, and discharge the personnel." Id. The Board noted these provisions in finding the two companies joint-employers. *Moderate Income Management Co*., supra, 256 NLRB 1193, 1193–1194.

In *Parma Industries*, 292 NLRB 90, 105 (1988), the agreement noted at 7.3 that Lessor LRPD employed the relevant personnel. The agreement provided at 6.1 and 7.4, however, that Lessee Jackson enjoyed authority to direct and terminate these employees. Id. The judge and Board stressed these provisions in finding the two companies joint-employers. *Parma Industries*, supra, 292 NLRB at 91 fn. 10, 105. See also *Union Carbide Bldg. Co*., 269 NLRB 144, 145–146 (1984) (management agreement permitted Agent S-W, inter alia, to "supervise and schedule" Owner Union Carbide's employees).

In the instant case, the Computer-Cushman management agreement specifically authorized Respondent Computer's facilities manager to participate in interviewing, hiring, and training Respondent Cushman's employees. Accordingly, I conclude that the Respondents' management agreement further tends to establish the joint-employer relationship between these Companies.

I further conclude that the credible testimony and the analysis of the Board's decisions concerning the various factors described above considered by the Board in determining joint-employer status conclusively establish that Respondents Computer and Cushman are joint-employers.

CONCLUSIONS OF LAW

1. Respondent Computer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Cushman is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondents Computer and Cushman are joint-employers.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent Computer violated Section 8(a)(1) and (3) of the Act by terminating its contract with Respondent Cushman, which directly resulted in the discharge of the nine Cushman engineering employees described above.

REMEDY

Since I have found that Computer discriminatorily terminated its subcontract with Cushman because Cushman's employees were members of, or engaged in activities on behalf of, the Union which termination resulted in the discharge of Cushman's employees, I shall recommend that Computer be ordered to offer unconditionally a reinstatement of its subcontract with Cushman and request in writing that Cushman offer employment to those employees employed by Cushman on March 31, 1993, and work at Computer's Islandia facility.

I shall also recommend that Computer make whole the nine employees working for Cushman at Computer's Islandia facility on March 31, 1993, for any loss of earnings or other benefits from the date of the termination of the Cushman subcontract and the resulting discharge of the Cushman employees until the date that Computer makes an unconditional offer in writing to Cushman to resume the subcontract and requests that Cushman offer employment to the employees described above.

Backpay shall be computed as described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I make the following recommended[1]

ORDER

The Respondent, Computer Associates International, Inc., Islandia, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees, or terminating its subcontract with Cushman, or any other employer with whom it has a subcontract because of its employees, the employees employed by Cushman, or any other employer with whom it has a subcontract, because of their membership in, or activities on behalf of, the Union or any other labor organization.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Cushman, in writing, a request to reinstate the subcontract in existence on March 1993, and request as a crew to be reassigned to the Islandia facility those nine employees who were effectively discharged as a result of the cancellation of the above subcontract on March 31, 1993.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make whole the nine employees employed by Cushman and working at the Islandia facility as of March 31, 1993, for any loss of earnings suffered as a result of the discriminatory termination of the Cushman subcontract in a manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Islandia and Uniondale, New York facilities copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees, are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."